

BGB File No.: 28-13382

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RAFAEL FIGUEROA,

Plaintiff,

- against -

IRENE YAGUDAEV and SOLOMON YAGUDAEV,

Defendants.

-----X
IRENE YAGUDAEV and SOLOMON YAGUDAEV,

Third-Party Plaintiffs,

- against -

NRG MAGIC CONSTRUCTION INC.,

Third-Party Defendant,
-----X

Civil No. 19-cv-210 (RA)

**THIRD PARTY
COMPLAINT**

Defendants/Third-Party Plaintiffs, IRENE YAGUDAEV and SOLOMON YAGUDAEV, by and through their attorneys, BRAND, GLICK & BRAND, P.C., as and for its Third-Party Complaint against the Third-Party Defendant, NRG MAGIC CONSTRUCTION INC., respectfully allege as follows upon information and belief:

1. That at all times hereinafter mentioned, third-party defendant, NRG MAGIC CONSTRUCTION INC., was and is a domestic corporation duly authorized to do business in the State of New York.

2. That at all times hereinafter mentioned, third-party defendant, NRG MAGIC CONSTRUCTION INC., was and is a foreign corporation, and by reason of its doing business in the State of New York and transacting business in the State of New York, is subject to the jurisdiction of this Court.

4. That at all times hereinafter mentioned, third-party defendant, NRG MAGIC CONSTRUCTION INC., maintained a principal place of business at 102-10 63rd Road, Forest Hills, New York 11375.

5. This action arises out of transactions or occurrences in the State of New York.

6. That heretofore an action has been commenced in this Court against the defendants/third-party plaintiffs, IRENE YAGUDAEV and SOLOMON YAGUDAEV, for damages allegedly sustained by plaintiff, RAFAEL FIGUEROA, on or about October 20, 2017, while performing a construction activity at the premises located at 110-48 Jewel Avenue, Queens, New York. A copy of the plaintiff's Summons and Complaint in the within action is annexed hereto and made a part hereof as **Exhibit "A"**.

7. That on or about December 24, 2018, defendants, IRENE YAGUDAEV and SOLOMON YAGUDAEV, answered the plaintiff's Complaint. Defendants, IRENE YAGUDAEV and SOLOMON YAGUDAEV, denied and continue to deny all material allegations in plaintiff's Complaint. A copy of the defendant's Verified Answer is annexed hereto as **Exhibit "B"**, and defendants/third-party plaintiffs beg leave to refer to same as if it were more fully set forth at length herein.

8. That prior to October 20, 2017, third-party defendant, NRG MAGIC CONSTRUCTION INC., entered into a contract and/or agreement to provide certain work and services at the premises located at 110-48 Jewel Avenue, Queens, New York ("the premises").

9. As part of the aforesaid written contract and/or agreement, third-party defendant undertook various obligations including, but not limited to, perform construction work, labor and/or services upon the premises.

10. That the plaintiff, RAFAEL FIGUEROA,, has alleged injuries arising out of an accident that occurred on or about October 20, 2017, when he purportedly fell two stories, through

unprotected, inadequately protected opening/hole at the subject premises.

11. That defendants, IRENE YAGUDAEV and SOLOMON YAGUDAEV, have generally denied their liability to plaintiff, but notwithstanding such denial, are exposed to damage by reason of possible verdict or judgment.

12. That by reason of such exposure to damage, this impleader is made against third-party defendant, NRG MAGIC CONSTRUCTION INC., by reason of its wrongful conduct in the operation and/or control of the subject premises and its failure to render or the improper rendering of services pursuant to a written contract and/or agreement between defendants and third-party defendant NRG MAGIC CONSTRUCTION INC.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST THIRD-PARTY DEFENDANT
NRG MAGIC CONSTRUCTION INC.**

COMMON LAW INDEMNIFICATION

13. That defendants, IRENE YAGUDAEV and SOLOMON YAGUDAEV, repeat and re-allege each and every allegation contained in paragraphs 1 through 12 of the third-party complaint above with the same force and effect as if set forth at length herein.

14. If plaintiff sustained the injuries and damages complained of in his complaint through any negligence, recklessness, fault or culpable conduct other than his own, such injuries and damages were caused by the wrongful conduct, breach of contract and negligence of third-party defendant, NRG MAGIC CONSTRUCTION INC., in that, among other things, through their agents, servants and employees and/or subcontractors, it failed to properly perform certain work, labor and/or services at the premises and otherwise perform its duties and/or work agreed to be done pursuant to the contract and/or listing agreement with defendants.

18. That although defendants, IRENE YAGUDAEV and SOLOMON YAGUDAEV, generally denied, and continues to deny, the allegations of wrongdoing asserted against it, nevertheless, should, be found liable to plaintiff then such liability shall derive from the active and

affirmative wrongdoing of IRENE YAGUDAEV and SOLOMON YAGUDAEV, third-party defendant, NRG MAGIC CONSTRUCTION INC., while any wrongdoing of defendant, IRENE YAGUDAEV and SOLOMON YAGUDAEV, will have been passive and secondary only. By reason thereof, defendants, IRENE YAGUDAEV and SOLOMON YAGUDAEV, shall be entitled to complete indemnity from third-party defendant, NRG MAGIC CONSTRUCTION INC.

19. That by reason thereof defendants, IRENE YAGUDAEV and SOLOMON YAGUDAEV, are entitled to full and complete indemnity from the third-party defendant, NRG MAGIC CONSTRUCTION INC.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST THIRD-PARTY DEFENDANT
NRG MAGIC CONSTRUCTION INC.**

CONTRIBUTION

20. That defendants, IRENE YAGUDAEV and SOLOMON YAGUDAEV, repeat and re-allege each and every allegation contained in paragraphs 1 through 19 of the third-party complaint above with the same force and effect as if set forth at length herein.

21. That although IRENE YAGUDAEV and SOLOMON YAGUDAEV generally denied, and continues to deny, the allegations of wrongdoing asserted against it, nevertheless, should IRENE YAGUDAEV and SOLOMON YAGUDAEV be found liable to plaintiff, and if complete indemnity is not granted in furtherance of the first cause of action hereinabove, then, IRENE YAGUDAEV and SOLOMON YAGUDAEV, are nevertheless, entitled to contribution from NRG MAGIC CONSTRUCTION INC., in proportion to the relative degrees of wrongdoing as between IRENE YAGUDAEV and SOLOMON YAGUDAEV, on one part, and NRG MAGIC CONSTRUCTION INC., on the other part.

22. That, by reason thereof, IRENE YAGUDAEV and SOLOMON YAGUDAEV, are entitled to an allocation of any damages by reason of verdict or judgment in proportion to the degrees of wrongdoing.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST THIRD-PARTY DEFENDANT
NRG MAGIC CONSTRUCTION INC.**

CONTRACTUAL INDEMNITY

23. That defendants, IRENE YAGUDAEV and SOLOMON YAGUDAEV, repeat and re-allege each and every allegation contained in paragraphs 1 through 22 of the third-party complaint above with the same force and effect as if set forth at length herein.

24. That an agreement was made by NRG MAGIC CONSTRUCTION INC., pursuant to which NRG MAGIC CONSTRUCTION INC., undertook to indemnify IRENE YAGUDAEV and SOLOMON YAGUDAEV, for loss or damage sustained by IRENE YAGUDAEV and SOLOMON YAGUDAEV, arising out of the scope of the undertaking of NRG MAGIC CONSTRUCTION INC., including the undertaking at the subject premises.

25. That demand has been made upon NRG MAGIC CONSTRUCTION INC., or its representatives, to undertake the defense and/or indemnity of IRENE YAGUDAEV and SOLOMON YAGUDAEV, but such has not been undertaken.

26. That, by reason thereof, IRENE YAGUDAEV and SOLOMON YAGUDAEV, for full indemnity together with those costs incurred by IRENE YAGUDAEV and SOLOMON YAGUDAEV, in the defense of the within action, including, but not limited to, counsel fees and expenses.

27. That, by reason thereof, IRENE YAGUDAEV and SOLOMON YAGUDAEV, are entitled to judgment against NRG MAGIC CONSTRUCTION INC., for full indemnity together with those costs incurred by IRENE YAGUDAEV and SOLOMON YAGUDAEV, in the defense of the within action, including, but not limited to, counsel fees and expenses.

WHEREFORE, defendant/third-party plaintiffs, IRENE YAGUDAEV and SOLOMON YAGUDAEV, demand judgment against the third-party defendant, NRG MAGIC CONSTRUCTION INC., as follows:

1. For common law indemnification on the first cause of action;
2. For contribution on the second cause of action;
3. For contractual indemnity on the third cause of action;
4. Together with costs and disbursements of this action.

Dated: Garden City, New York
March 7, 2019

Yours etc.,

BRAND GLICK & BRAND, P.C.

By: 

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NRG MAGIC CONSTRUCTION INC.
Third-Party Defendant
102-10 63rd Road
Forest Hills, NY 11375

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THIRD PARTY COMPLAINT

BRAND GLICK & BRAND, P.C.

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